the plaintiff can never recover damages unless that refusal is held to be a waiver, — obviously contrary to intention and imposing on the defendant a liability greater than justice demands. There should therefore be recovery for breach of the implied promise not to prevent performance. Such is the result reached in those cases where the beneficiary is allowed to recover as damages the value of the policy less the unpaid premiums,[7] for the damages for breach of the express promise to pay the amount of the policy would be that sum and interest. This breach of the implied promise in the present case happens to be immediate, and therefore the action should be maintained.

Unfortunately the court disregarded these considerations, and on the ground that Massachusetts does not adopt the doctrine of anticipatory breach gave judgment for the defendant. It seems to follow from this case that there is now in Massachusetts no recovery for breach of the implied promise not to prevent performance. It will be interesting to observe whether the court will adhere to this rule when the question is next presented to it. A. L.

INNKEEPER'S LIABILITY TO GUESTS. — An early English case,[1] involving the question of an innkeeper's liability for the loss of his guests' goods, has, through different interpretations of its language, caused a striking diversity of decision. In England after some uncertainty it was laid down that an innkeeper is only *prima facie* liable. This might be rebutted by showing that the loss occurred without his own fault or that of his servants.[2] This is now law in a number of jurisdictions in the United States.[3] The view was, however, finally overruled in England.[4] It is now the English law that, unless the loss was caused by the act of God, the public enemy, or by the fault of the guest, an innkeeper is liable as an insurer. This view is adopted by a slight preponderance of authority in the United States.[5]

An insurer's liability should obviously not be imposed upon any one in charge of the property of another without strong reason. The rule in the case of innkeepers was originally established on grounds of public policy. At that time the country was infested with robbers. Easy opportunities and the transient character of their guests offered strong temptation to innkeepers to collude with criminals in depriving them of their property. This strict rule was therefore dictated by necessity. It is argued in some of the cases that the reason for the rule no longer exists. But, although our country is no longer infested with robbers, yet innkeepers may still collude with others for fraud and theft. This is especially probable in the cheaper hotels of the cities. Guests are comparatively helpless and must rely greatly upon the honesty of the innkeepers. The courts would, therefore, seem to be justified in applying the insurer's liability rule in the case of the disappearance of a guest's property.

The reason of the rule does not apply, however, where the goods are

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[7] Guetzkow *v.* Mich. Mut. Life Ins. Co., 105 Wis. 448; Natl. Mut. Ins. Co. *v.* Home Benefit Society, 181 Pa. St. 443.

[1] Calye's Case, 8 Co. 32.
[2] Dawson *v.* Chamney, 5 Q. B. 164.
[3] Metcalf *v.* Hess, 14 Ill. 129.
[4] Morgan *v.* Ravey, 6 H. & N. 265.
[5] Sibley *v.* Aldrich, 33 N. H. 553.

destroyed by some obvious operation of nature, as by fire. Accordingly, Michigan [6] and Vermont [7] have adopted an intermediate rule. An insurer's liability is imposed in cases of disappearance of the guest's property, but only a *prima facie* liability where the loss is caused by a natural casualty. A recent Minnesota case, involving the destruction of a guest's property by fire, in effect adopts this rule, qualifying the language of a previous decision [8] in that state. *Johnson* v. *Chadbourn Finance Co.*, 94 N. W. Rep. 874. This rule seems to attain justice without sacrificing the restraining influence of the insurer's liability. In view of the diversity of decisions, policy may well determine what rule should be adopted. The principal case in applying the intermediate rule carefully excludes cases of theft, and thus obtains a very happy adaptation of justice to the needs of the case.

FORFEITURE IN EQUITY. — In cases of contracts for the sale of land where time is stipulated to be of the essence and where the vendee agrees in case of default to forfeit payments already made, courts of equity are not in accord as to what relief, if any, should be given a defaulting vendee. The rule in England is on payment of the balance due [1] to grant specific performance to the vendee. These stipulations as to time and forfeiture are held to be inserted merely as additional security for the payment of money. If the vendor is given his principal, interest, and costs, he has, therefore, no right to complain. In certain American jurisdictions, for instance Wisconsin, the courts are more favorable to the vendor. He may either suffer specific performance or refund the payments already made.[2] In California, finally, and some few other states, equity affords the vendee no protection whatever.[3] Here a vendor may bring ejectment against a vendee in possession without returning previous payments. *Williams* v. *Long*, 72 Pac. Rep. 911 (Cal.). The argument is, that, in the absence of fraud, accident, or mistake, justice does not require that a man be relieved from the effect of agreements he knowingly made and negligently failed to observe.

It would seem that no one of these rules will in its application be universally equitable. When a court is convinced that a decree of specific performance on payment of principal, interest, and costs will give the vendor all he really bargained for, the decree should issue. But if circumstances have so changed that the results contemplated by the parties cannot be brought about, it is equally obvious that the decree should be denied. Nor is it always fair to force the vendor to refund payments he has received. He may have suffered damages even in excess of these payments. Here it would seem that the vendee should be refunded only the excess of payments, if any there be, over the real damage the vendor has suffered. The true solution would therefore seem to vary in each particular case and not to lie in any hard and fast rule. The vendee should in every case be accorded the fullest measure of relief consistent with leaving the vendor

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[6] Cutler *v.* Bonney, 30 Mich. 259.
[7] Merrit *v.* Claghorn, 23 Vt. 177.
[8] Lusk *v.* Belote, 22 Minn. 468.

[1] Vernon *v.* Stephens, 2 P. W. 66.
[2] See Hall *v.* Delaplaine, 5 Wisc. 206.
[3] Glock *v.* Howard & Wilson Colony Co., 123 Cal. 1.